

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP,
AND MECHANICAL VENTILATOR PRODUCTS
LITIGATION

This document relates to:

All Personal Injury and Medical Monitoring Actions

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)
) Master Docket: No. 21-mc-1230-
) JFC
)

) MDL No. 3014
)
)

**JOINT SUBMISSION REGARDING EVIDENTIARY
HEARING ON KONINKLIJKE PHILIPS N.V.’S MOTIONS
TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

The parties jointly provide the following update to the Court in connection with the October 17, 2023 evidentiary hearing.

October 13, 2023: The parties will submit hard-copy binders to the Court containing the PX and DX exhibits. These binders are intended to *replace*, rather than supplement, the prior PX and DX exhibit binders provided to the Court in July. These binders will each include an index containing the other party’s non-relevancy objections.¹ The parties will also submit a hard drive containing those few exhibits that, for size and/or formatting reasons, are not amenable to printing.

The parties do not intend to resubmit to the Court any binders of the JX exhibits.

October 17, 2023: The parties understand that the evidentiary hearing will begin after the conclusion of the 10 a.m. Case Management Conferences. The parties jointly propose the following presentation of evidence and argument:

- 1) Opening statements. Plaintiffs have requested a five minute per side opening statement. KPNV takes no position on this request.

¹ All objections as to relevancy have been preserved by both sides on all exhibits, including the joint (“JX”) exhibits.

- 2) Admission of exhibits. The parties will jointly move to admit the set of JX exhibits identified by each party in their prehearing submission. Then Plaintiffs and KPNV will move to admit, respectively, the PX and DX exhibits.² The parties respectfully request that all exhibits be conditionally admitted into evidence at the outset of proceedings, subject to each side's objections. The parties respectfully suggest that the parties address their objections further as the Court may request or as either party may elect in their presentation or post-hearing submission.
- 3) Admission of deposition testimony. The parties will jointly offer the designated testimony from the transcripts of six depositions.³ Each party has also identified its objections to the opposing party's proffered testimony. The parties respectfully request that the Court receive the deposition testimony at the outset of proceedings, subject to each side's objections. The parties respectfully suggest that the parties address their objections further as the Court may request or as either party may elect in their presentation or post-hearing submission.
- 4) Admission of the testimony of Mr. Vitor Rocha by stipulation. The parties have reached an agreement to stipulate as to the testimony that Mr. Rocha would have provided if called at the hearing. For this reason, KPNV will no longer be calling Mr. Rocha as a live witness. The parties will jointly offer into evidence their

² Certain of the DX exhibits are full transcripts of depositions. KPNV will not seek to admit those transcripts in full, but only (as discussed in the next paragraph) the designated portions of those transcripts.

³ Each of the six deposition transcripts has been highlighted to reflect each party's designations, with Plaintiffs' designations in yellow and KPNV's designations in green. Testimony designated by both sides is highlighted in orange.

Stipulation for Evidentiary Hearing Regarding Vitor Rocha at the hearing, and respectfully request that the Court receive the stipulation.

- 5) In-person testimony of Ms. Deborah Roux. KPNV will call Ms. Roux as a witness. Ms. Roux is anticipated to testify for up to approximately 90 minutes in total, with approximately 30 minutes on direct. Ms. Roux will be the only live witness during the hearing.

6) Argument.

- a) Plaintiffs request 90 minutes for argument and presentation for each party, with Plaintiffs able to reserve up to 10 minutes for rebuttal. Plaintiffs' request is consistent with the parties' July 26 submission, Dkt. 2121, and is necessary to allow full discussion of the voluminous record and multiple legal and factual disputes at issue.
- b) KPNV requests, at most, 75 minutes for argument and presentation for each party. KPNV has never requested or agreed to 90 minutes. Even more, between the date of the last scheduled (and postponed) evidentiary hearing and the current one, the parties submitted over 100 pages of renewed briefing as well as prehearing statements that lay out "exactly what the issues are going to be at the hearing" and provide "a roadmap." (Aug. 8, 2023 Status Conference Tr. at 17, 42.) KPNV does not object if Plaintiffs wish to reserve up to 10 minutes for rebuttal. But 75 minutes in total is more than enough, particularly given the extensive prior briefing and the post-hearing submissions that will follow the hearing.

Dated: October 13, 2023

Respectfully Submitted,

/s/ Sandra Duggan

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